

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of Lisa
Posch under Minn. R. 9502.0300 to
9502.0445

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on September 28, 2007, at the Wright County Human Services Building, 1004 Commercial Drive, Buffalo, Minnesota 55313.

Ann L. Mohaupt, Assistant Wright County Attorney, 10 Second Street NW, Buffalo, Minnesota 55313-1189, appeared on behalf of the Department of Human Services. The licensee, Lisa Posch, did not appear in person or by counsel. The record closed upon the Licensee's default at the close of the hearing on September 28, 2007.

STATEMENT OF THE ISSUE

The issue is whether the Department of Human Services' order of revocation of Lisa Posch's family daycare license should be affirmed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 19, 2007, a copy of the Notice of and Order for (the "Notice") was sent via first class mail to Licensee, Lisa Posch, as appears from the Affidavit of Service by Certified United States Mail on file herein. The Licensee acknowledged receipt of the Notice by filing a Notice of Appearance dated July 25, 2007.

2. The Licensee did not request a continuance or any other relief prior to the hearing, and did not appear at the hearing.

3. The Notice of and Order for Hearing contained the following informational warning:

Failure to appear at the hearing or prehearing will result in the allegations of the Notice of and Order for Hearing, including the incorporated order, being taken as true. This means that the action being appealed will be upheld.

4. Because Licensee failed to appear, she is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing may be taken as true and incorporated by reference into these Findings of Fact. Because Licensee failed to appear, she is in default.

6. The allegations contained in the Order of Revocation dated May 31, 2007 are deemed to be and are taken as true and correct, and are incorporated by reference.^[1]

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The ALJ and the Department are authorized to consider the charges against Licensee under Minn. Stat. § 245A.08 and Minn. R. 1400.8505 to 1400.8612.

2. Licensee received due, proper and timely notice of the charges against her, and of the time and place of the hearing. This matter is, therefore, properly before the Department and the ALJ.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of, and the issues set out in the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Licensee is in default herein as a result of the failure to appear at the hearing.

6. All allegations in the Notice of and Order for Hearing are adopted as true.

7. The Department has the authority to revoke the license of the Licensee pursuant to Minn. Stat. § 245A.07.

8. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

9. The Commissioner has advanced evidence establishing reasonable cause to believe that Licensee failed to: comply with the terms of her conditional license;^[2] supervise children in her care in violation of Minn. R. 9502.0315, subp. 29a; comply with the requirements for licensed capacity, use of substitutes, and child/adult ratios as required under Minn. R. 9502.0365 and 9502.0367; complete the training requirements of Minn. R. 9502.0385; comply with the requirements for an appropriate physical environment under Minn. R. 9502.0425; comply with the requirements for sanitation and health under Minn. R. 9502.0435; comply with the requirements for water, food and nutrition under Minn. R. 9502.0445.^[3]

10. Licensee has failed to demonstrate by a preponderance of the evidence that she was in full compliance with any of the rules listed in Conclusion 10 above, as alleged by the Department.

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the Commissioner affirm the revocation of Licensee's license to provide child care.

Dated: October 3, 2007

s/M. Kevin Snell

M. KEVIN SNELL

Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Department will make the final decision after a review of the record. The Department may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Department shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Department. Parties should contact the Department to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Department, or upon the expiration of the deadline for doing so. The Department must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

M. K. S.

^[1] Exhibit 2.

^[2] Ex. 6.

^[3] Ex. 2.